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6   **IN THE UNITED STATES DISTRICT COURT**

7   **FOR THE DISTRICT OF ARIZONA**

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9   Bobby Hoffman,   No. CV-23-01247-PHX-DJH

10   Plaintiff,   **ORDER**

11   v.

12   Pride Security LLC, et al.,

13   Defendants.

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15   The parties have filed a "Joint Motion to Approve the Settlement Agreements or,

16   Alternatively, dismiss this case with Prejudice" (Doc. 47). For the reasons set forth below,

17   the Court grants the parties Motion and approves their proposed settlement.

18   **I.   Background**

19   This case was brought by Plaintiffs Bobby Hoffman, Major Manchester, Isaac

20   Gudino, and West Pedersen (collectively, "Plaintiffs") who all worked as security guards

21   for Defendant Pride Security, LLC ("Defendant Pride Security"). (Doc. 1 at ¶ 40).

22   Plaintiffs allege that they "routinely" worked more than forty hours per week for

23   Defendant, normally around eighty-four hours a week. (*Id*. at ¶¶ 43–45). Plaintiffs alleges

24   that Defendant required them to work overtime hours but that they did not receive overtime

25   pay. (*Id*. at ¶¶ 46–50). Thus, Plaintiffs brought suit against Defendant Pride Security, its

26   owner Roy Gartley ("Mr. Gartley"), and Mr. Gartley's wife Jillian, alleging failure to pay

27   overtime in violation of the Fair Labor Standard Act ("FLSA"), 29 U.S.C. § 201–219. (*Id*.

28   at ¶¶ 24–25). The parties have agreed to a settlement (Doc. 44) and have filed a "Joint

1   Motion to Approve Settlement Agreements or, Alternatively, Dismiss the Case with

2   Prejudice" (Doc. 47). The parties have attached the proposed settlement agreements as

3   exhibits to their Motion. (Doc. 47-1 at 1–12; 29–40; 57–68; 85–96).

4   As outlined in their settlement agreements, the parties have agreed to settle

5   Plaintiffs' claims under the following terms and Defendants agree to pay:

- Mr. Hoffman agrees to a $20,250 settlement as follows: (a) $5,838.00 less applicable tax withholdings for the disputed unpaid overtime hours; (b) $5,838.00 as a non-wage payment; (c) $250.00 for the general release of all non-FLSA claims and covenants not to sue, and other terms of the settlement agreement unrelated to the payment of wages and his FLSA claims; and (d) attorney's fees and costs of $8,324.00;

- Mr. Manchester agrees to a $20,250 settlement as follows: (a) $11,676.00 less applicable tax withholdings for the disputed overtime hours; (b) $250.00 for the general release of all non-FLSA claims and covenants not to sue, and the other terms of the settlement agreement unrelated to the payment of wages and his FLSA claims; and (c) attorney's fees and costs of $8,324.00;

- Mr. Gudino agrees to a $3,750 settlement as follows: (a) $2,100 less applicable tax withholdings for the disputed unpaid overtime hours; (b) $250.00 for the general release of all non-FLSA claims and covenants not to sue, and the other terms of the settlement agreement unrelated to the payment of wages and his FLSA claims; and (c) attorney's fees and costs of $8,324.00; and

- Mr. Pedersen agrees to a $12,250 settlement as follows: (a) $6,876.00 less applicable tax withholdings for the disputed unpaid overtime hours; (b) $250.00 for the general release of all non-FLSA claims and covenants not to sue, and the other terms of the settlement agreement unrelated to the payment of wages and his FLSA claims; and (c) attorney's fees and costs of $5,124.00.

23 (Doc. 47 at 6-7).

24 **II.   Legal Standard**

25   The issue before the Court is whether it must, or should, continue reviewing FLSA

26 settlements for fairness and reasonableness. There is no binding precedent in the Ninth

27 Circuit that gives the Court guidance on this issue. Because of this, district courts in the

28 Ninth Circuit have routinely utilized the Eleventh Circuit's standard set out in *Lynn's Food*

1 *Stores, Inc. v. United States*, 679 F.2d 1350 (11th Cir. 1982) when reviewing FLSA

2 settlement agreements. *See Rape v. Shrader & Martinez Constr. USA LLC*, 2022 WL

3 4182351 (D. Ariz. Sept. 12, 2022) (stating that "[i]n deciding whether to approve the

4 parties' [FLSA] settlement, courts in the Ninth Circuit follow *Lynn's Foods*.").

5   In *Lynn's Food Stores*, the Eleventh Circuit held that, if a settlement reflects a

6 "reasonable compromise over [the] issues, such as . . . computation of back wages, that are

7 actually in dispute," a district court may approve the settlement "in order to promote the

8 policy of encouraging settlement of the litigation." *Lynn's Food Stores,* 679 F.2d at 1354.

9 However, the settlement must be "fair and reasonable." *Id*. Furthermore, because FLSA

10 settlements are "[u]nlike most private settlements negotiated between parties in a civil

11 action for damages, in a FLSA case or class action, the parties ***must*** seek the district court's

12 approval of the settlement's terms to ensure that it is enforceable and fair." *Juvera v.*

13 *Salcido*, 2013 WL 6628039, at *3 (D. Ariz. 2013) (emphasis added).

14 **III.   Discussion**

15   The parties seek the Court's approval of their Settlement Agreements, or,

16 alternatively, to dismiss this case with prejudice without review. (Doc. 47 at 1). The Court

17 will review the FLSA Settlement Agreements for the reasons that follow.

18   The FLSA states that "[a]n action to recover [] liability. . . may be maintained

19 against an employer (including a public agency) in any Federal or State court of competent

20 jurisdiction." 29 U.S.C. § 216(b). The FLSA provides that "the court in such action shall,

21 in addition to any judgement awarded to the plaintiff or plaintiffs, allow a reasonable

22 attorney's fee to be paid by the defendant, and costs of action." *Id*. This right only

23 terminates when the Secretary of Labor takes an action under Section 217. *See id*. Courts

24 around the United States have taken different positions as to the adjudicatory authority of

25 judges reviewing FLSA settlements and a Circuit split has since developed on the courts

26 authority to review FLSA settlements. This Circuit split was recently laid out by a court

27 in this district in *Evans v. Centurion Managed Care of Arizona LLC*, 2023 WL 5095201,

28 at *3 (D. Ariz. Aug. 9, 2023):

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> The Eleventh and Second Circuits require judicial supervision of the FLSA settlement agreements for back wages; the Fifth Circuit carves out a narrow exception to the supervisory requirement; the Fourth, Seventh, Eighth, and Ninth Circuits have not expressly decided the issue, but have (in dicta) acknowledged the requirement of supervision; and the First, Third, Sixth, Tenth, and District of Columbia Circuit having not yet expressly addressed the issue.

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As displayed above, many Circuits acknowledge the authority of the district court to review FLSA settlements to some degree, with some Circuit's requiring it. *See id.* No Circuit has decided that district courts are prohibited from reviewing FLSA settlement agreements. *See id.*

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However, some courts have decided not to review FLSA settlements. The district court in *Evans* held that a court may dismiss a case requesting judicial approval of settlement because "judicial approval is neither authorized nor necessary" in FLSA cases. 2023 WL 5095201, at *3. The *Evans* court reasoned that Federal Rule of Civil Procedure 41(a)(1)(A) "strips a court of jurisdiction in the sense that it terminates the case all by itself. There is nothing left to adjudicate." *Id.* at *2. The *Evans* court noted that Rule 41(A)(1)(A) provides exceptions for "applicable federal statutes," but that the FLSA is not one of the contemplated federal statutes. *Id.* This is because the FLSA does not expressly require judicial approval and requiring it is a procedural hurdle prolonging litigation, counter to the intent of Rule 41. *Id.* at *3.

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In an unpublished opinion, the Ninth Circuit held that "FLSA claims may not be settled without approval of either the Secretary of Labor or a district court." *Seminiano v. Xyris Enter., Inc.,* 602 F.App'x 682, 683 (9th Cir. 2015). Although *Seminiano* is an unpublished opinion, it gives a subtle nod to courts, within this Circuit, that judicial approval of FLSA settlement agreements is appropriate. This Court will adhere to the Ninth Circuit's view. The Ninth Circuit has held that it is "well settled in the usual litigation context that courts have inherent power summarily to enforce a settlement agreement with respect to an action pending before it; the actual merits of the controversy become inconsequential." *Dacanay v. Mendoza* 573 F.2d 1075, 1078 (9th Cir. 1978).

1   Because 29 U.S.C. § 216(b) explicitly states that FLSA claims may be brought in Federal

2   or State court, presumably it gives courts the ability to fully adjudicate those claims, i.e.,

3   approval or disapproval of settlement.

4   On the merits of this Motion, the Court has reviewed the parties proposed Settlement

5   Agreements. (Doc. 47). The Court finds that these proposed settlements reflect a fair and

6   reasonable compromise because they compensate Plaintiffs for unpaid wages and

7   attorneys' fees and, in exchange, Defendants avoid liability. (Doc. 47 at 6).   The

8   uncertainty associated with further litigation and the void of liability supports the

9   settlement amount. Moreover, Plaintiffs are made whole because they receive back pay

10   and attorneys' fees associated with the cost of litigation. At this juncture, and until binding

11   precedent requires otherwise, this Court will continue to review FLSA settlements to

12   ensure that they are fair and reasonable. *See Lynn's Food Stores*, 679 F.2d at 1354.

13   Accordingly,

14   **IT IS HERBY ORDERED** that the Joint Motion to Approve Settlement Agreement

15   or Alternatively, Dismiss Case with Prejudice (Doc. At 47) is **GRANTED**.

16   **IT IS FURTHER ORDERED** that the Settlement Agreement and Release of All

17   Claims (Doc. 47-1) is **approved**.

18   **IT IS FURTHER ORDERED** that payments shall be distributed in accordance

19   with the Settlement Agreement. (Doc. 47-1).

20   **IT IS ALSO ORDERED** that Plaintiff's Motion for Attorneys' Fees and Costs in

21   the amount of $8,333.34 (Doc. 21) is **GRANTED**.

22   **IT IS FINALLY ORDERED** that this action is **dismissed with prejudice**, with

23   each party to bear their own attorneys' fees and costs, except as set forth in the Settlement

24   Agreement (Doc. 47-1).

25   Dated this 12th day of February, 2024.

26   Honorable Diane J. Humetewa
27   United States District Judge

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